

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT GREEN,

Plaintiff-Appellant,

v

EARL WERNER,

Defendant-Appellee.

UNPUBLISHED

February 5, 2004

No. 244822

Washtenaw Circuit Court

LC No. 01-000908-NO

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court’s order granting defendant’s motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, a professional painter who was hired by defendant to paint the exterior trim of his house, suggested that defendant hire an exterminator to deal with several nests of bees or wasps that he noticed around a carport at the home. Defendant’s wife sprayed several of the visible nests with insecticide. Several days later plaintiff was working on a flat portion of roof when he hit a nest hidden behind a chimney. He attempted to escape the bees by hurrying down his ladder but slipped and fell to the ground, sustaining injuries.

Plaintiff filed suit alleging that defendant breached his duty to ensure that the premises were reasonably safe by failing to inspect for and remove insect nests and by failing to warn of the dangerous condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing that he had no legal duty to keep the premises free of insects or to hire an exterminator, and that no evidence showed that he had knowledge of the nest hidden behind the chimney. The trial court granted the motion.

We review a trial court’s decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish negligence, a plaintiff must show: (1) that the defendant owed a duty to the plaintiff, (2) that the defendant breached the duty, (3) that the defendant’s breach caused the plaintiff’s injuries, and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

The issue of duty is a question of law for the court. *Moning v Alfonso*, 400 Mich 425, 436-437; 254 NW2d 759 (1977). “In deciding whether a duty should be imposed, the court must look at several factors, including the relationship of the parties, the foreseeability of the harm, the burden on the defendant, and the nature of the risk presented.” *Hakari v Ski Brule, Inc*, 230 Mich App 352, 359; 584 NW2d 345 (1998). If no duty exists, then a plaintiff’s negligence action must fail. *Id.*

A landowner only has a duty to protect an invitee from damage caused by a dangerous condition of the land if the owner knew or reasonably should have known of the condition, should realize that the condition poses an unreasonable threat of harm, should expect that the invitee will not discover the condition, and failed to take reasonable precautions to protect the invitee against the threat. *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 597; 614 NW2d 88 (2000). Landowners are not absolute insurers of their invitees’ safety. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995).

Plaintiff posits that defendant would have learned of the nest if he had hired an exterminator. However, no authority holds that defendant, as the landowner, had a duty to consult a professional exterminator. Defendant did not tell plaintiff that he would consult a professional exterminator, but rather assured plaintiff that he would deal with the insect problem in the carport, insinuating that he would handle it himself. No evidence showed that defendant had notice of the nest hidden behind the chimney on the roof. Plaintiff acknowledged that the nest was not visible and that he did not know of its existence until he hit it. His assumption that this nest had been present for a sufficient time to put defendant on notice of its existence is based entirely on conjecture. *Ritter v Meijer, Inc*, 128 Mich App 783, 786; 341 NW2d 220 (1983). Defendant took steps to eliminate known, visible nests. The trial court correctly held that defendant did not owe plaintiff a duty to protect him from the nest’s dangers because defendant did not know of the condition’s existence, and no evidence implied that he should have known of it. The trial court also correctly refrained from extending the parameters of defendant’s duty by holding that he, rather than plaintiff, should have discovered the nest hidden behind a chimney on the home’s roof. Therefore, the trial court did not err in granting summary disposition to defendant. *Stitt, supra; Hakari, supra.*

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O’Connell
/s/ Karen M. Fort Hood